

# A Guide to...

# Reservists' Ri



With the increasing role of reservists and members of the National Guard in the war on terrorism, more and more service members are being affected by call-ups to active duty. This is a guide to the rights these men and women are entitled to when active duty calls:

Since the Al Qaeda terrorist attacks of September 11, 2001, some 130,000 reserve forces have been called up to serve at one time or another. More than 75,000 are currently serving, and a possible attack on Iraq could increase that number by 100,000.

Though active duty reservists are covered by the Uniform Code of Military Justice and given active duty benefits like basic pay, housing allowance, and medical benefits, must take a 10 to 50 percent pay cut when mobilized. So any additional rights or protections from the federal government are helpful and often essential to reservists going on or coming off active duty.

Protection of the civilian-employed military service member began in 1940, with passage of the *Veterans Reemployment Rights Act*. In 1994, Congress passed the *Uniformed Services Employment and Reemployment Rights Act (USERRA)*, a comprehensive revision of that law.

According to Mike Simpson (R-Idaho), chairman of the House subcommittee on Veterans Benefits, "The purpose of USERRA is to ensure that the brave men and women who stand ready to defend America are not in any way penalized for their service."

Here is a handy reference guide to the reservists' rights covered by this law. To be protected by these laws, reservists must:

- Have a civilian job;
- Give written or verbal notice to the employer;
- Not have exceeded the five-year cumulative limit on service (five years per job, not including time missed for training or during wartime);
- Have been relocated under conditions other than

dishonorable; and

- Report back to the civilian job in a timely manner.

## Rights protected under *USERRA*:

### *Leave*

- Verbal notification is sufficient for reserve training and military missions.
- State missions, such as disaster relief, are not covered, though many states have similar laws of their own.

### *Employment*

- Reservists may not be denied employment because of military status.
- Employers must reinstate reservists to their jobs upon return with accrued seniority, promotions or pay raises they would have earned had they not left.
- For service of less than 31 days, reservists must return to work at the beginning of the next regularly scheduled shift after travel home and an eight-hour rest period.
- For service of 31-180 days, reservists must return no later than 14 days after release.
- For service of more than 180 days, reservists have up to 90 days to ask for their jobs back.
- Employers are not required to pay reservists while they are gone, but reservists may use vacation leave.
- Employers are required to keep health insurance available. For less than 31 days' service, insurance must stay in place. For more than 30 days, it may be continued, but reservists may have to pay up to 100 percent of the premium. Reservists not electing to continue coverage may resume it immediately upon return, with no waiting period or exclusions for pre-existing conditions.
- Reservists have protection against job termination for

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By  
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a minimum of six months.

## **Training**

- Employers must train or retrain returning reservists.
- Employers must accommodate those returning with disabilities due to service.
- Help is available to all returning service members having problems with their employers:
- National Committee for Employer Support of the Guard and Reserve (ESGR), supported by the Defense Department, mediates disputes between reservists and employers. Some 4,500 volunteers making up 55 committees are available, and according to the committee, able to mediate a solution in about 90 percent of the cases they handle.
- Veterans Employment and Training Service (VETS) , part of the Department of Labor, handles cases that cannot be resolved by ESGR. It employs 120 investigators who have the authority to issue subpoenas and, if necessary, refer cases for consideration of representation.
- Service members are encouraged to contact ESGR first when employment-related issues exist.

## **Soldiers' and Sailors' Civil Relief Act**

In addition to *USERRA*, members of the military also are protected by the *Soldier's and Sailors' Civil Relief Act*, created in 1940 to postpone or suspend certain civil obligation with which military service could interfere. Here are the basic protections of that law:

### ***In the Courts***

- *Default judgments:* Courts can't enter a default judgment for failure to appear at trial or respond to a lawsuit during a period of active duty.
- *Stay of Execution of Judgments:* Courts may stay execution of judgments, court actions, attachments and garnishments, unless reservist's ability to comply is not affected by service.



- *Stay of proceedings:* Courts may stay civil court proceedings during a period of active duty plus 60 days.

### ***Other Civil Situations***

- *Foreclosure:* Reservists are protected against mortgage foreclosures provided certain conditions are met.
- *Installment Contracts:* Reservists are protected from rescission or termination of contract for purchase of real or personal property if deposit is paid before service begins and ability to pay is "materially affected" by service.
- *Interest Rates:* Reservists can petition lenders (loan, credit card, mortgage) to drop rate to 6 percent for period of active duty.
- *Life Insurance:* Reservists are protected against lapse, termination and forfeiture for nonpayment of premiums for period of military service plus two years.
- *Taxes:* State of residence can tax military income and personal property, but collection of taxes may be deferred for period of active duty plus six months.
- *Termination of Lease:* (One of the most-used provisions of the Act.) Reservists may terminate

lease for house or business if lease was entered before active duty and premises are occupied by member or dependents.

**For more information on your rights contact one of the following organizations:**

#### ***National Committee for Employer Support of the Guard and Reserve***

1555 Wilson Blvd., Suite 200  
Arlington, VA 22209-2405  
1-800-336-4590  
[www.esgr.org](http://www.esgr.org)  
[ncesgr@ra.osd.mil](mailto:ncesgr@ra.osd.mil)

#### ***Veterans Employment and Training Service***

U.S. Department of labor  
200 Constitution Ave., NW  
Room S-1316  
Washington, DC 20210

#### ***National Guard Association of California***

3336 Bradshaw Road  
Suite 230  
Sacramento, CA 95827-2615  
916-362-3411


*This article appeared in the December 2002 issue of "VFW Magazine," and is reprinted here with "VFW Magazine's" permission.* 



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